applicant seeks the order of possession. Although it is not necessary for me to decide the point, I am of the opinion that the right of the bankrupt's wife and children to remain on the premises flows from and is tied up with the bankrupt's right to remain on the premises.

The order of the Court will therefore be that the bankrupt do deliver up vacant possession of the premises to the applicant on or before 31st October, 1962.

Application granted.

Solicitors: *Allen & Gledhill; Richard Talalla.*

YEO THIAM CHYE v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) September 19, 1962]

[Muar — Criminal Appeal No. 24 of 1962]

Criminal Law and Procedure — Evidence of bad character — Deposition by prosecution — Procedure after conviction.

If a person is a known bad character the proper procedure after conviction is for a police officer to go into the witness box and depose on oath that he knows from his own knowledge that the accused is of bad character and the accused must then be given an opportunity to cross-examine the police officer on that point.

CRIMINAL APPEAL.

C. Paramjothy for the appellant.

Syed Agil Barakbah (Deputy Public Prosecutor) for the respondent.

Adams J.: This was an appeal in which Mr. Paramjothy appeared for the appellant who had been sentenced to 6 months' imprisonment for having committed house trespass for the purpose of using criminal force on one of the occupants of the house, an offence punishable under section 451 of the Penal Code.

The facts are somewhat unsavoury. The complainant was at all material times a whore who was carrying on her trade at No. 115 in the back lane of Jalan Meriam, Muar. Apparently she used to be patronised by the accused two or three times a month. The accused said that she had promised to become his permanent mistress but broke all her promises. He alleged that she had cheated him and that he had lost his job as a result of her. The accused came to her room on the 12th May while she was carrying on her business and was occupied with a client. The accused made a disturbance when the client came to leave, slapped the complainant and broke a kerosene lamp, 3 glasses and some tea cups. The police arrived during the commotion.

The accused, who had no previous convictions, is a young man of 29 years of age. Apparently at the end of the case for the defence when the accused was found guilty the prosecuting officer reported that similar troubles had been happening in the area which is a notoriously unsavoury one and there had been many robberies and extortions in that area. It was apparently on this basis the learned Magistrate sentenced the accused to 6 months' imprisonment.

With very great respect there was no evidence whatsoever against the accused that he was of bad character and responsible for the robberies and extortions. If a person is a known bad character the proper procedure after conviction is for a police officer to go into the witness box and depose on oath that he knows from his own knowledge that the accused is of bad character and the accused must then be given an opportunity to cross-examine the police officer on that point.

In my opinion in a case of this nature, unsavoury though the facts may be, the accused who is a first offender could have been adequately dealt with under the provisions of section 294 of the Criminal Procedure Code. I therefore quashed the sentence of imprisonment and substituted an order that the accused be released on his entering into a bond in his own recognizance of $200 and one surety in a similar sum for a period of six months and during such period to appear and receive judgment if and when called upon and in the meantime to keep the peace and be of good behaviour. I also direct that he pay $50 compensation to the complainant.

Accused released on bond.

Solicitors: *Wong & Paramjothy.*

KAN YEOW WING v. KENG SOON MOTOR FINANCE CO.

[O. C. J. (Ong J.) September 21, 1962]

[K.L. — Civil Suit No. 136 of 1961]

Hire-purchase — Agreement — Sale and reletting on hire-purchase — Whether moneylending transaction — Moneylenders Ordinance, s.16.

Bill of Sale — Whether bill of sale void for non-registration — Bills of Sale Ordinance, 1950, s.4(1).

Moneylending — Absence of memorandum — Moneylenders Ordinance, 1951, s.16.

The principles applicable in determining whether a hire-purchase agreement is a bill of sale and therefore void for non-registration are as follows: (1) If a person deliberately, with a clear understanding of what he is doing, and with all appropriate formalities, sells his property to a finance company and then hires it back under a hire-purchase agreement, the agreement is not a bill of sale. (2) If the purpose of the transaction is to enable the hirer to dispose of the property to a customer, the courts will the more readily hold that the agreement is not a bill of sale. (3) If the hire-purchase agreement is a mere device to cloak a loan, the document is a bill of sale. (4) In considering whether the real transaction is one of loan, it is necessary to look behind the document to discover its true nature. (5) If the facts are not truly stated in the document, this is a circumstance tending to show that the document is a mere cloak. *North Central Wagon Finance Co. Ltd.* v. *Brailsford & Anor.* (3) followed.

In this case as the transaction was one of a loan on security rather than a genuine sale and reletting on hire-purchase the plaintiff was entitled to the relief prayed because there was non-registration under the Bills of Sale Ordinance and there was no memorandum of

contract of loan as required by section 16 of the Moneylenders Ordinance.

Cases referred to:—

(1) *Eastern Distributors Ltd.* v. *Goldring* [1957] 2 All. E.R. 525, 527.

(2) *Olds Discount Co. Ltd.* v. *Cohen* [1938] 3 All E.R. 281.

(3) *North Central Finance Co. Ltd.* v. *Brailsford & Anor.* [1962] 1 All E.R. 502.

(4) *Yorkshire Railway Wagon Co.* v. *Maclure* (1882) 21 Ch. D. 309.

(5) *British Railway Traffic & Electric Co.* v. *Kahn* [1921] W.N. 52.

(6) *Staffs Motor Guarantee, Ltd.* v. *British Wagon Co. Ltd.* [1934] 2 K.B. 305.

(7) *Polsky* v. *S. & A. Services, S. & A. Services* v. *Polsky* [1951] 1 All E.R. 185.

The following cases, not referred to in the judgment, were cited in argument: *Nugawela* v. *Soon Teck Finance* [1960] M.L.J. 302; *J. Michael* v. *Soon Teck Finance* [1962] M.L.J. 53 at p. 56; *Monzies* v. *United Motor Finance Corporation Ltd.* [1940] 1 All E.R. 549, 553; *Transport & Gen. Cr. Corpn.* v. *Morgan* [1939] 2 All E.R. 17 at p. 28; *Teja Singh* v. *Periasamy* [1958] M.L.J. 81.

ACTION.

Edgar Joseph Jr. for the plaintiff.

K. A. Menon for the defendants.

Cur. Adv. Vult.

Ong J.: The question raised in this case is whether certain agreements manifestly for the hire-purchase of motor vehicles should be declared void for non-registration as bills of sale under the Bills of Sale Ordinance, 1950.

The plaintiff is the sole proprietor of a haulage business in Seremban known as Lee Woh Lorry Service. In 1960 he owned and operated a fleet of eleven lorries, but in June of that year he was indebted to Koong Hing Hup Kee, a Seremban firm of pawnbrokers, to the extent of $25,000 which they were pressing him to pay. One Fung Swee Choo, then managing partner of the pawnshop, arranged an appointment with Chong Piak Teng, a partner of the defendant firm who was in charge of the hire-purchase department. The defendants' business consisted in the main of financing the hire-purchase of both new and used motor vehicles; they also acted as agents for motor dealers, and at all relevant times they were and are licensed moneylenders under the Moneylenders Ordinance, 1951.

When Fung came to the defendants' place of business on June 26, or 27, to keep the appointment with Chong, he was accompanied by the plaintiff whom he introduced to Chong. For the purposes of this case it is unnecessary to set out any matters in controversy relating to what took place at 37 Ampang Street that afternoon. It is sufficient to state only the undisputed facts. Chong and the plaintiff reached complete agreement. As a result Chong gave to the plaintiff five cheques drawn for a total of $25,000, although payment of $32,500 was acknowledged in five separate receipts signed by the plaintiff for $9,000, $9,000, $5,500, $4,500 and $3,500 expressed to be the full purchase price of motor lorries NA.2991, NA.3034, NA.2073, NA.1272 and JA.5970 respectively. The cheques were endorsed by the plaintiff and given to Fung, who then did what was necessary for the withdrawal of the ownership claim of the pawnbrokers to those five lorries as endorsed on the relative five registration books. A number of other papers was at the same time prepared for the plaintiff's signature, comprising five agreements of hire-purchase, five receipts acknowledging delivery of the five lorries to him in good order and condition by the defendants, and presumably, as a matter of course, the prescribed M.V.3 forms required by the Road Transport Department upon the change of ownership and possession from the plaintiff to the defendants and back again from the one to the other. It is immaterial whether the agreements and other papers were signed that day in blank, as alleged by the plaintiff, or otherwise. On June 28 the following changes were made by the R.I.M.V., Seremban, in the registered ownership and endorsements on the registration books: deletion of the ownership claim of Koong Hing Hup Kee Pawnshop, registration of the transfers of the vehicles to the defendants, registration of retransfers by the defendants to the plaintiff, and endorsement of the defendant's claim to ownership. On June 28, also, the transactions were entered in the regular hire-purchase account books of the defendants in the usual manner, and the master-cards and various index cards were prepared as used ordinarily in all their hire-purchase transactions. A few days later the plaintiff's copies of the hire-purchase agreements reached him by post. Thereafter he paid the defendants some instalments amounting to a total of $3,390.30, but subsequently fell badly into arrears. On March 8, 1961 the defendants' solicitors gave him notice of demand for the sum of $9,761.85 in accumulated arrears and intimated that legal proceedings would be taken to recover such sum in the event of his further default. He thereupon consulted his solicitors and commenced this action alleging that the transaction was in truth a loan and praying for: (1) a declaration that the five hire-purchase agreements were bills of sale given by way of security which are void by reason of non-registration under section 4(1) and not being in the form prescribed by section 6 of the Bills of Sale Ordinance, 1950; (2) a declaration that the contracts for repayment and the securities given in respect thereof are void and unenforceable by reason of non-compliance with the provisions of section 16 of the Moneylenders Ordinance, 1951.

The defence, shortly, is that the plaintiff had expressly desired and intended to enter into hire-purchase transactions with the defendants and that he knowingly and voluntarily entered into and executed the agreements which in fact represented the true intention of the parties.

The contention of counsel for the defendant is that the Bills of Sale Ordinance is not intended to interfere with transactions other than those plainly coming within the scope of the statutory definition of a bill of sale; that there is nothing to prevent the parties, deliberately exercising their freedom of contract, from so arranging matters that there is nothing to which the Ordinance can apply; that unless a document is within the terms of the Ordinance it is not affected, even though in the result the Ordinance is evaded; and that, in the words of Devlin J. (as he then was) in *Eastern Distributors Ltd.* v. *Goldring*: (1)

"There is, however, nothing to prevent the owner of a vehicle from selling it to a hire-purchase company, pocketing the price and paying it back by instalments; and provided the sale is a genuine one and not a sham, effect will be given to it as a hire-purchase agreement."

It was argued that, even if the plaintiff were in urgent need of a loan and it was to his advantage to obtain moneys from the defendants at lower rates than the interest he had been paying to the pawnbrokers, nevertheless it does not necessarily follow that the moneys he obtained from the defendants must be regarded as a loan on security. The argument in effect was what Porter J. said in *Olds Discount Co. Ltd.* v. *Cohen*: (2)

"What one has to remember — and I think that this might be said of almost all bodies which finance hire-purchase agreements (and they are very numerous at the present time) — is that their real function is the lending of money, and it must necessarily be so. Although that may be the object and the intention for which they exist, the question is not with what object they employ their money, but the method they have of employing it. If the method employed constitutes a sale, then the transaction is not only the lending of the money but also a purchase of the goods, even though it is only for the purpose of lending money that it is being done in that way."

Counsel therefore submitted that when business people, such as the parties here, deliberately entered into formal contracts which plainly are not moneylending agreements, the proper course for the Court to take is to accept the formal agreements between the parties and to decide their rights according to these agreements.

I do not think it is necessary to refer to the various authorities cited by counsel for both parties. The principles applicable in determining whether an agreement of hire-purchase is a bill of sale, and therefore void for non-registration as such, have been succinctly set out by Cairns J. in the recent case of *North Central Wagon Finance Co. Ltd.* v. *Brailsford & Anor.* (3) where his Lordship said:

"I propose now to consider whether the hire-purchase agreement was in law and in fact a bill of sale. There are relevant authorities, and from them I think that the following proposition can be derived: (i) if a person deliberately, with a clear understanding of what he is doing, and with all appropriate formalities, sells his property to a finance company and then hires it back under a hire-purchase agreement, the agreement is not a bill of sale (*Yorkshire Railway Wagon Co.* v. *Maclure*),(4) a decision of the Court of Appeal; and *British Railway Traffic & Electric Co.* v. *Kahn*, (5) a decision of Rowlatt J.; (ii) if the purpose of the transaction is to enable the hirer to dispose of the property to a customer, the courts will the more readily hold that the agreement is not a bill of sale (*Staffs Motor Guarantee, Ltd.* v. *British Wagon Co. Ltd.* (6), a decision of MacKinnon J.); (iii) if the hire-purchase agreement is a mere device to cloak a loan, the document is a bill of sale (*Maclure's* case, *per* Lindley L.J.); (iv) in considering whether the real transaction is one of loan, it is necessary to look behind the documents to discover its true nature (*Polsky* v. *S. & A. Services*, *S. & A. Services* v. *Polsky* (7), a judgment of Lord Goddard C.J., affirmed by the Court of Appeal; (v) if the facts are not truly stated in the documents, there is a circumstance tending to show that the documents are a mere cloak (*Polsky's* case)."

In the present case I have to consider whether certain established facts are reconcilable or consistent with a genuine sale of the vehicles.

It was alleged by the plaintiff, and not challenged by the defendants, that he had purchased the vehicles at the following dates and prices: (1) NA.2991, a 1959 Ford Thames lorry, was purchased for about $7,500 in August 1959; (2) NA.3034, a 1959 Bedford lorry, was purchased second-hand for between $5,000 and $6,000 in October 1959; (3) NA.2073, a 1955 Bedford lorry was purchased for about $2,000 in August 1959; (4) NA.1272, a 1954 Bedford lorry (ex War Department vehicle) was purchased for $1,750 in August 1957; and (5) JA.5970, a 1951 Bedford lorry was purchased for about $2,000 in June 1958.

In the transaction of June 1960 between the parties these lorries realised $7,500, $7.500, $4,000, $3,500 and $2,500 respectively. Such prices were fixed without sight or examination of the lorries by any representative of the defendants. It is logical to expect each successive resale of any vehicle, seen or unseen, to be at a lower price than what it had fetched previously. Yet the value remained the same for NA.2991 and appreciated in the case of the other four lorries. This hardly lends an air of reality to the transaction. The receipted prices — as stated in the hire-purchase agreements — are even higher, by $1,500, $1,500, $1,500, $1,000 and $1,000 respectively. These amounts were stated to have been deducted as initial payments upon hire-purchase which had been set off against the sale price. Assuming this to be true, then every one of the vehicles had appreciated to an extent which passes all understanding. I should add that the same lorries should have been given a market resale value as such without the benefit of the haulage permits which were personal to the plaintiff. It is common knowledge that a substantial percentage of the purchase price is demanded by way of initial payment upon any hire-purchase of goods. The defendants themselves subscribed to this custom of the trade, as appears in the schedules to the five agreements herein. The fixing of unrealistic prices having no relation to the true values of the vehicles, and the notional setting off of the initial payments therefore makes the conclusion inevitable, that the prices and initial payments were tailored to suit the plaintiff's requirements for adequate cash accommodation to repay the pawnbrokers, in other words, to substitute one creditor for another and

that the true purchase agreements were not a mirror of the truth.

I accordingly find that the transaction was one of loan on security rather than a genuine sale and reletting on hire-purchase. The plaintiff accordingly succeeds, and he is entitled to both the declarations prayed, because there was non-registration under the Bills of Sale Ordinance and no memorandum of the contract of loan as required by section 16 of the Moneylenders Ordinance. The defence of estoppel cannot arise and the counterclaim for arrears of hire likewise fails. Costs will follow the event. There will also be a consequential order that the ownership claim of the defendant to these five vehicles be cancelled by the Registrar and Inspector of Motor Vehicles.

Order accordingly.

Solicitors: *Joseph & Son; Braddell & Ramani.*

ABDUL SAMAD v. GAMMON & CHRISTIANI-NIELSEN

[O. C. J. (Gill J.) September 22, 1962]

[K.L. — Civil Suit No. 539 of 1961]

Damages — Personal injuries — Right forearm and wrist — Multiple laceration and compound fracture — "Claw hand" — Assessment of disability.

The plaintiff, a 32-year old ex-tailor, was employed by the defendants as a winch driver of their dredging crane. On February 1, 1961, in the course of his employment he was ordered by his foreman to remove the bearing counter weight when as a result of the negligence of the defendants the piston struck the plaintiff's right forearm in consequence of which he sustained severe injuries to his forearm and wrist. He claimed damages for the injuries suffered. As the defendants admitted liability, the only question before the Court was the quantum of damages.

Medical evidence produced at the hearing showed that the plaintiff suffered multiple lacerations of right hand and wrist involving wrist joint. He also suffered a compound fracture of the lower end of the ulna bone and the two main arteries of the hand, the median nerve and flexor muscle were severed. Two of the small bones of the wrist had been detached. As a result of these injuries the plaintiff had what is called a "claw hand", i.e. a hand in which the fingers are in a semi-flexed position. He could use his hand only for coarse work and not for refined movement, e.g. he could not do any writing because of the difficulty of securing a grip on a pen or pencil. There was also evidence that he would not be able to work as a winch driver any more because the grip of his hand was very weak, but there was possibility for him to do a bit of sewing with a mechanically operated machine although he would not be able to do any cutting unless he trained himself to use his left hand. The doctor assessed disability of his hand at 25%, which he said was worked out on the basis of workmen's compensation.

Held: (1) the assessment of disability on the basis of workmen's compensation had to be re-assessed in relation to whatever occupation the plaintiff engaged himself in, for instance, in this case, as a winch driver the plaintiff's disability would be 100%;

(2) taking into consideration his age, the ordinary hazards of life, pain and suffering which he suffered as a result of the injuries, the impairment and consequently the potential future earning capacity of the plaintiff and the loss of amenities, general damages $12,500 were reasonable. This and special damages of $496.50 were awarded with interest thereon at 6% p.a. from date of judgment to date of satisfaction and taxed costs.

Cases referred to:—

(1) *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29.

(2) *Jag Singh* v. *Toong Fong Omnibus & Co. Ltd.* [1962] M.L.J. 271.

(3) *Low Kwee Swee* v. *Chu Teck Tong & Anor.* [1962] M.L.J. lxxxiii.

CIVIL SUIT.

Karam Singh for the plaintiff.

B. L. Ooi for the defendants.

Gill J.: The plaintiff in this case was employed by the defendants as a winch driver in the dredging crane at Sungei Dua, Port Swettenham. On the 1st of February, 1961, at about 9.30 p.m. in the course of his employment he was ordered by his foreman on duty to remove the bearing counter weight when as a result of the negligence of the defendants, the piston struck plaintiff's right forearm in consequence of which he sustained severe injuries of his forearm and wrist. He brought the present action for damages for the injuries suffered by him. The defendants having admitted liability, the only question to be decided by the court was the quantum of damages.

The medical evidence produced at the hearing of the case on the quantum of damages showed that the plaintiff suffered multiple lacerations of right hand and wrist involving wrist joint. In addition he suffered a compound fracture of the lower end of ulna bone and the two main arteries of the hand, the median nerve and flexor muscle were severed. Two of the small bones of the wrist had been detached. As a result of these injuries the plaintiff has what is called a "claw hand," that is, a hand in which the fingers are in a semi-flexed position. He can use his hand only for coarse work and not for refined movement. For instance, he would not be able to do any writing because of the difficulty of securing a grip on a pen or pencil. The doctor further stated in evidence that he did not think that the plaintiff will be able to work as a winch driver any more because the grip of his hand is very weak, but he went on to say that it should be possible for the plaintiff to do a bit of sewing with a mechanically operated machine although he will not be able to do any cutting unless he trained himself to use his left hand. I mention this because the plaintiff gave evidence that before he was employed by the defendants he was a tailor in which employment he used to earn $150 to $200 a month and that even as a winch driver he used to do tailoring in the night and earn $60 to $70 a month.

There is no doubt that the plaintiff now has a permanently deformed hand. The doctor assessed disability of his hand at 25% which he said was worked out on the basis of workmen's compensation. This, however, will have to be re-assessed in relation to whatever occupation the